

(1975) 2 LLJ 259

Orissa High Court

Case No: None

Md. Mazim

APPELLANT

Vs

District Transport
Manager (Admn.)
Orissa State Transport
Services and Others

RESPONDENT

Date of Decision: Oct. 17, 1974

Acts Referred:

- Penal Code, 1860 (IPC) - Section 279, 337

Citation: (1975) 2 LLJ 259

Hon'ble Judges: R.N. Misra, J; P.K. Mohanti, J

Bench: Division Bench

Judgement

R.N. Misra, J.

The petitioner is a driver in the employment of the Orissa State Transport Service, a Government undertaking. He along with one Golak Chandra Naik, the cleaner of the vehicle which the petitioner was driving was suspended from service with effect from 4-11-1965 on the ground that they were involved in an accident case and had been charge-sheeted for offence punishable under Sections 279 and 337 of the Indian Penal Code. The petitioner was convicted in the original Court, on 2-1-1967. On the following day, he was discharged from service on that ground. The conviction was upheld in appeal, but this Court by judgment, dated 28-11-1967 acquitted the petitioner of the charges. As the petitioner was not taken back into service by revoking the order of discharge, the petitioner made a representation on 7th of January, 1970. On 13-4-1970, the Divisional Manager (opposite party No. 2) passed the following order:

...The appellant was discharged from service consequent upon his conviction in the Court of law. Since he has been acquitted of the charge by the Hon"ble High Court of Orissa, his appeal is allowed and it is ordered that the appellant may be given a fresh

appointment as a driver forthwith.

(Annexure 4)

The petitioner joined services with effect from 15-5-1970 and made a representation that the break in service should be condoned and the petitioner should not be treated as a fresh recruit. The petitioner was thereafter once retrenched as he was treated as a new recruit, but ultimately on 9-3-1973 the following order was passed--

After due consideration of the representation of the Mahammad Kazim, ex-Driver, S.T.S. Cuttack Zone, the Director S.T.S. Orissa has been pleased to order that Mahammad Kazim should be re instated to his former post of driver in Cuttack Zone treating the entire period of absence as leave due to him.

(Annexure 9)

The petitioner challenges this direction and contends that he must be given full salary and other service benefits and the direction to treat the entire period of absence as leave due to him is unwarranted.

2. In the counter-affidavit, it has been alleged that the writ application is liable to be rejected on the ground of acquiescence, inasmuch as the petitioner had accepted several short term appointments after his acquittal. It is next contended that the petitioner is a workman as defined under the Industrial Disputes Act and the proper forum for relief is the Labour Court or the Tribunal under the Act. It is also contended that the petitioner's claim is essentially in the nature of recovery of salary or damages and, therefore, the Civil Court would be more appropriate forum to deal with the matter. It thus transpires that so far as the merit of the matter is concerned, there is indeed nothing in the counter-affidavit.

3. Coming to the objection on the ground of maintainability, we find absolutely no force in it. Admittedly the petitioner is also the holder of a civil post and even though he may be entitled to advantages as a workman under the Industrial Disputes Act. the maintainability of the writ application is not open to challenge on that ground. The acceptance of the short term appointments does not affect the petitioner's case because the Director has now accepted the position that the petitioner must be treated to be in continuous service.

4. The only question that arises for consideration is that whether the period during which the petitioner was absent from service should be treated as leave or he should be deemed to be on duty and be paid the salary and other dues as admissible to him. Admittedly the petitioner was not absent from service on his own volition, but he had been suspended from service during the pendency of the criminal charge and discharged from services upon conviction. Even after acquittal as early as 28-11-1967, more than two years were taken to restore the petitioner to service. There was no disciplinary proceeding against the petitioner and the suspension as also the discharge arose out of his involvement in the criminal case and consequent conviction in the original court. That

being so, when there was an order of acquittal, the petitioner must normally have returned to service. When the position is so clear, there is no justification at all in the direction of the Director of the State Transport Services to treat the absence of the petitioner from service as leave due to him. As we have already pointed out, it is indeed no absence of the petitioner. The petitioner was kept away from the service. Absence would certainly postulate a voluntary action of the employee. That certainly was not the situation here.

5. We would accordingly quash the order in Annexure 9 directing the period during which the petitioner was not rendering service to be leave due to him. On the other hand, we direct that a writ of mandamus do issue requiring the opposite parties to treat the petitioner to have been in service during the period and pay him all his legitimate dues for that period within a period of three months from the date of service of the writ. We direct parties to bear their own costs. We make it clear that the period during which he was in service and has received his remuneration must be excluded while calculating his dues.

P.K. Mohanti, J.

6. I agree.